

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO A. VALENZUELA,

Plaintiff,

v.

T. SCHMIDT,

Defendant.

No. 2:22-cv-01109 DB P

ORDER

Plaintiff, a state inmate proceeding pro se and in forma pauperis, filed this civil rights action seeking relief under 42 U.S.C. § 1983 for an alleged unconstitutional use of force by the defendants in connection with a cell extraction. This matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 26, 2023, the court granted defendants' motion to opt out of the court's post-screening ADR project. The order dated July 26, 2023, was served to plaintiff by mail at his address of record and was returned by the United States Post Office as undeliverable.

On August 16, 2023, defendants filed a motion to stay, or, in the alternative, for an extension of time to respond to the complaint. (ECF No. 18.) Defendants served the motion to plaintiff at his address of record. Defendants also served the motion to plaintiff at Kern Valley State Prison. (Id. at 9.) Plaintiff did not file a timely opposition or statement of opposition to the motion.

On September 14, 2023, the Clerk of Court updated plaintiff's address to Kern Valley State Prison pursuant to plaintiff's address of record in a new case. (ECF No. 20.)

Local Rule 230(l) provides in part:

Opposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one (21) days after the date of service of the motion. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. Failure of the responding party to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions.

In addition, Local Rule 110 provides that failure to comply with the Local Rules "may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court." Id. Therefore, plaintiff will be ordered to file an opposition or statement of non-opposition to the motion to stay. Plaintiff is hereby advised that failure to do so will result in a recommendation that this action be dismissed. See Fed. R. Civ. P. 41(b).

Good cause appearing, IT IS HEREBY ORDERED as follows:


1. The Clerk of the Court is directed to serve plaintiff by mail with a copy of the court's order filed on July 26, 2023 (ECF No. 17).

2. Within thirty days from the date of this order, plaintiff shall file an opposition, if any, to defendants' motion to stay. Failure to file an opposition or statement of non-opposition will be deemed as consent to have the action dismissed for lack of prosecution based on plaintiff's failure to comply with the court's rules and a court order. Said failure shall result in a recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

3. Sua sponte, the court grants defendants an extension of time up to and including November 14, 2023, to file a response to plaintiff's complaint.

Dated: September 29, 2023

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE